

APPEAL NO. 022271
FILED OCTOBER 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 7, 2002. The hearing officer determined that (1) the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter; (2) the claimant is not entitled to SIBs for the fifth quarter; (3) the claimant is entitled to SIBs for the sixth quarter; (4) the claimant is entitled to SIBs for the seventh quarter; and (5) the appellant (carrier) is relieved from liability for SIBs for the entire fifth and sixth quarters, and for the period of May 20 through June 4, 2002, of the seventh quarter because of the claimant's failure to timely file an Application for [SIBs] (TWCC-52) for each of those quarters. The carrier appeals the hearing officer's determinations that the claimant is entitled to sixth and seventh quarter SIBs on sufficiency grounds. The claimant urges affirmance. The hearing officer's determinations with regard to fourth and fifth quarter SIBs and the claimant's failure to timely file an application for the fifth, sixth, and seventh quarters were not appealed and are final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is entitled to sixth and seventh quarter SIBs. At issue was whether the claimant returned to work in a position relatively equal to her ability to work during the qualifying periods for the sixth and seventh quarters. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed. Accordingly, the carrier is not liable for the payment of SIBs for the entire sixth quarter and for the period of May 20 through June 4, 2002, of the seventh quarter because of the claimant's failure to timely file a TWCC-52.

The true corporate name of the insurance carrier is **FREMONT INDUSTRIAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge